



MEMORANDUM

DATE: July 18, 2001

TO: Donna Kerger, Chair
General Plan Review Commission

FROM: Bob Saxe, City Attorney *BS*

SUBJECT: General Plan Policies Sections 4.6-I-2, 8.4-I-15

In further reviewing the final draft of the General Plan, I came across two items which should be brought to the attention of the Commission.

1 Section 4.6-I-2 provides:

“Petition the Local Agency Formation Commission (LAFCo) to extend the City’s Sphere of Influence (SOI) if the County’s Urban Limit Line (ULL) is expanded. Extension of the SOI would include all lands between the City’s UGB and the County’s revised ULL. Rezoning of any such areas shall be maintained unless modified by a four-fifths vote of the City Council.”

I recommend that the last sentence of §4.6-I-2 be deleted. First, the procedure for rezoning is a part of the Zoning Ordinance, not the General Plan. To impose a four-fifths vote requirement would require amending the Zoning Ordinance. It cannot be done through the General Plan. Secondly, I think it would violate due process and equal protection for a city to require a 4/5 vote for rezoning or prezoning certain property under its jurisdiction while only requiring a majority vote for the remaining areas of the City.

2. The introductory language of Section 8.4-I-15 provides:

“With voter approval, allow exemptions from the provisions of Ordinance 197, specifically the prohibition of development on or adjacent to Major and Minor Ridges, only where:”

My understanding of the Commission's intent in including the Ordinance 197 "exemption provision" was to recognize the ability of property owners desiring to develop their property in a manner consistent with the land use designation in the General Plan but inconsistent with Ordinance 197 to go to the voters on a project by project basis requesting approval of an amendment to 197 exempting the proposed project from all or any portion of Ordinance 197.

As written, §8.4-I-15 appears to recognize exemptions only as to the ridgeline provisions of Ordinance 197. There are a number of other constraints (for example, creek setback requirements) in Ordinance 197 which could affect development of a parcel. If your intent was simply to acknowledge that voter approval would be required for development inconsistent with Ordinance 197, I recommend that you delete the words "specifically the prohibition of development on or adjacent to Major and Minor Ridges...."

I apologize that this is coming to you belatedly but clarification now may avoid confusion and controversy down the road. Neither of these changes would impact the draft EIR.

cc: Phil Wong
Debbie Chamberlain